

RYAN SPILLERS
TRAVIS S. WEST
GILBERT & SACKMAN
A LAW CORPORATION
3699 Wilshire Boulevard, Suite 1200
Los Angeles, California 90010
Telephone: (323) 938-3000
Fax: (323) 937-9139

Attorneys for United Food and Commercial Workers Local 324

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BODEGA LATINA CORPORATION D/B/A
EL SUPER,

Respondent,

and

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 324

Charging Party.

Case No. 21-CA-183276

**UNITED FOOD AND
COMMERCIAL WORKERS UNION,
LOCAL 324'S CROSS-EXCEPTIONS
TO THE DECEMEBER 29, 2017
DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

United Food and Commercial Workers Union, Local 324 (“Union”) states the following exceptions to the December 29, 2017 Decision of Administrative Law Judge Herald M. Etchingham (ALJ) (JD(SF)-55-17) in the above-captioned case. The Union will not contemporaneously file a brief in support of its cross-exceptions, but will include the citation of authorities and argument in support of its cross-exceptions in this document per 29 C.F.R. § 102.46(a)(1)(i)(D).

1. The Union excepts to the ALJ’s finding that “Respondent and the Union Locals implemented a ratified collective-bargaining agreement (CBA) with Respondent’s last and final offer dated April 7, 2014” as contrary to the record evidence. ALJ Dec. 4.

Bodega Latina Corporation d/b/a El Super (“El Super”) unilaterally implemented the April 7, 2014 contract offer that it called its last, best, and final; this offer was never ratified by the Union or its membership. *See* GCX 2; Tr. 26:16-19, 34:18-22, 37:10-13, 57:1-7, 66:1-3, 67:13-17, 161:9-12. This fact is ultimately immaterial to Judge Etchingham’s conclusions in this case, but we would like to correct the record on this point.

2. The Union excepts to the ALJ’s failure to order El Super to pay Ms. Beltran interest accrued between when Ms. Beltran should have received payment pursuant to her March 22, 2016 request for paid time-off, and June 24, 2016, when Ms. Beltran was paid-out for these accrued vacation hours pursuant to the settlement in Case 21-CA-138274. ALJ Dec. 32-33.

The ALJ properly found that “Respondent delayed payment of Beltran’s March 22 time-off request for approximately 3 months until [the] June 24 payment.” ALJ Dec. at 17. While El Super ultimately paid Ms. Beltran the principal amount, it never compensated Ms. Beltran for interest accrued over this three-month period of delay. *See* JX1 at paragraph 12 (the parties stipulated that on “June 24, 2016,” Ms. Beltran received payment for “22.71 vacation hours

(accrued between April 9, 2014 and April 8, 2015, unused between April 9, 2015 and April 8, 2016, and due and owing as of April 9, 2016) in the amount of \$298.47. No interest was paid on this amount"). The Board has long held that interest should be awarded on any monetary award, and recently clarified that "interest on backpay will be compounded on a daily basis." *Jackson Hosp. Corp.*, 356 NLRB 6, 9 (2010); *see also New Horizons for the Retarded, Inc.*, 283 NLRB 1173 (1987). Here, backpay and interest would have been warranted had El Super not already paid out these vacation amounts on June 24, 2016. It therefore follows that interest from the date that Ms. Beltran would have been paid had El Super not unlawfully denied her vacation pay request through June 24, 2016, when Ms. Beltran was paid, is warranted here. Ms. Beltran suffered economic harm as a result of El Super denying her request to use accrued vacation benefits during her medical leave of absence. Even though El Super eventually paid out, pursuant to a separate settlement agreement, the vacation amounts that Ms. Beltran sought to draw upon to receive pay during her medical leave, El Super should have to compensate Ms. Beltran for its failure to pay Ms. Beltran as she requested.

DATED: March 21, 2018

Respectfully submitted,
GILBERT & SACKMAN
A LAW CORPORATION

By



Travis S. West

*Attorneys for United Food and Commercial
Workers Union, Local 324*

DECLARATION OF SERVICE

On March 21, 2018, I hereby certify that I electronically filed the foregoing:

**UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 324'S
CROSS-EXCEPTIONS TO THE DECEMBER 29, 2017 DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

with the National Labor Relations Board using the NLRB's e-filing system addressed to the Board's Office of Executive Secretary.

I also served the above document by electronic mail to:

Mori Rubin
Regional Director
NLRB Region 31
11500 W. Olympic Blvd., Ste. 600
Los Angeles, CA 90063
Email: Mori.Rubin@nlrb.gov

Elvira Pereda
Counsel for the General Counsel
NLRB Region 31
11500 W. Olympic Blvd., Ste. 600
Los Angeles, CA 90063
Email: Elvira.Pereda@nlrb.gov

Steven D. Wheelless
Counsel for Respondent
Steptoe & Johnson LLP
201 E. Washington St., Ste. 1600
Phoenix, AZ 85004
Email: swheelless@steptoe.com

Erin Norris Bass
Counsel for Respondent
Steptoe & Johnson LLP
201 E. Washington St., Ste. 1600
Phoenix, AZ 85004
Email: ebass@steptoe.com

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and was executed by me on March 21, 2018, in Los Angeles, California.



Travis West